

FIDO'S NOT A PET!

Reasonable Accommodations and the
Rights of Disabled Tenants

Fair Housing Center of NE-IA

- A program of Family Housing Advisory Services, a HUD certified housing counseling agency founded in 1968.
- Center has been in operation since 1994.
- Conducts testing and investigation of housing discrimination complaints in Nebraska and Iowa.
- Provides counseling and education on housing rights.

Laws relating to disability discrimination

- Fair Housing Act of 1968, as amended by the Fair Housing Amendments Act of 1968
- Nebraska Fair Housing Act
- Lincoln Municipal Code (Title 11)
- Omaha City Code (Section 13-300)
- These laws are distinct from, and should not be confused with, The Americans with Disabilities Act.

The laws share a common definition of disability

- Physical or mental handicap that substantially limits one or more major life activities, such as walking, breathing, holding employment, learning, etc;
- Having a history of such impairments;
- Being perceived as having such impairments.

Determining who meets these requirements.

- Any third party with the individual knowledge to understand the limitations created by a physical or mental condition.
- May not always be a doctor!
- Physical/vocational therapists, mental health professionals, clergy, etc.
- Finding by a government agency or insurance company.

Equal Treatment

- People with disabilities cannot be treated adversely because they are disabled.
- Differences in treatment must be justified by one or more legitimate nondiscriminatory reasons.
- Nothing in the FHA requires that a landlord rent to a person whose tenancy poses a direct threat to the health or safety of others or who physically damage the property.

Disabilities are not always visible

- Physical disabilities such as epilepsy, arthritis, multiple sclerosis, etc.
- Courts have ruled that conditions such as asthma and chemical sensitivity can be disabilities.
- Many mental disabilities have no outward manifestations.

What Are Reasonable Accommodations?

- Changes or waivers of policies and practices in order to allow disabled tenants to have the full use and enjoyment of their housing as non-disabled tenants.
- This includes allowing disabled tenants to have service or support animals despite “no-pet” policies.
- No charges can be assessed for the RA.

What Gives Rise to a R/A Request?

- The person has a disability within the meaning of the law.
- The housing provider knows, or should know, of the nature of the disability.
- The accommodation is needed to allow the tenant to have the full benefit of the housing.
- The housing provider knows, or should know, of the need for the accommodation .

Accommodations v. Modifications

- Accommodations are waivers or exemptions from policies or practices;
- Modifications are changes to the physical environment;
- With some exceptions, modifications are generally done at the tenant's expense;
- Modifications are generally reversed at the end of the tenancy, unless they do not interfere with continued general use.

How Are Reasonable Accommodations Requested?

- The process is not formal or rigid.
- Landlords are not required to have a written policy on reasonable accommodations.
- Oral requests are just as valid as written requests.
- The request does not have to be labeled as a reasonable accommodation (reasonable accommodation is a technical term).

When Do Reasonable Accommodations Have to Be Made?

- When the request is reasonable and related to a disability.
- When the request does not pose an undue financial **and** administrative burden to the housing provider.
- Requests should be promptly acted upon; lack of action may be viewed as a denial.

Verifying the Presence of a Disability and the Need for a R/A

- Some disabilities may be obvious on their face.
- Landlord must accept the representations from a knowledgeable person attesting to the presence of a disability.
- Landlord is entitled to verification of the need for the accommodation but not entitled to a diagnosis or complete medical records.

Evaluating the Request

- Every request should be determined by the specific facts.
- Is the request related to the disability?
- Does it alter the fundamental nature of the business?
- What is the financial impact of the request
- What administrative changes does the request create?

If the Request is Denied...

- Landlord must communicate the reason for denial, and
- Initiate an “interactive process” to see if there is an alternative solution to the problem creating the need for the accommodation.

The Courts Have Said...

- *“If a landlord is skeptical of a tenant’s alleged disability or the landlord’s ability to provide an accommodation, it is incumbent upon the landlord to request documentation or open a dialogue.” Jankowski Lee and Associates v. Cisneros, 91 F. 3rd 891 (7th Circuit, 1996)*

Service Animals are trained to perform certain tasks for the tenant

- Seeing eye dogs for mobility.
- “Hearing dogs” to alert hearing impaired tenants to visitors, dangers, etc.
- Seizure alert animals trained to let people with seizure disorders know that a seizure is imminent.
- Not all service animals are dogs!

Psychiatric or Therapeutic Animals

- Used in the treatment of mental disabilities such as depression or post-traumatic stress disorder.
- May or may not receive special training in order to be effective in treatment of the disability, but are still considered a service animal.

Service Animals are not pets!

- No extra deposit or “pet rent” can be charged to the tenant.
- Size and breed restrictions do not apply to service animals.
- What does a landlord do when others complain about a “pet” in violation of policies or the lease?

Tenant's responsibilities

- Tenant must comply with all animal control regulations (vaccines, licenses, leash laws, etc.)
- Tenant responsible for animal waste clean-up.
- Any damage caused by the animal is the tenant's responsibility

Questions? Call Us!

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